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ADOPTION OF EUROPEAN UNION'S LAW IN HUNGARY, IN THE AREA OF PRODUCT ADEQUACY

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Abstract

The EU measures to introduce the internal market came into force on December 31st, 1992. The Council of the European Community produced a Directive, which describes harmonization of rules issued by the Member Countries concerning machines. The European Union is an important economic partner of Hungary. We analyzed the situation concerning machines before the Hungarian connection to European Community.

Keywords: harmonization, standardization, accreditation, safety, product warranty, lift.

1. Technical Regulatory System within the European Union

Current economic trends are showing that both Europe and the world is being transformed into a huge, more or less open market economy. Within that scope, single countries shall play a significant or an insignificant role in proportion of their respective economic potentials. No country may refrain itself from the existence of market mechanisms. This mechanism is functioning on the basis of the cooperation of 'compatible' economies of individual countries, as an organizing principle. One condition of this compatibility is the common or at least harmonized system of legal regulations, norms and standards concerning the economy, the safe functioning and proper quality of products. In similar cases, even products shall be used in common with other products or parts originating from different countries, in that case, compatibility shall be interpreted in its even narrower sense, too.

The EU measures to introduce the internal market came into force on December 31st, 1992. Internal market means a territory without internal limits, where free movement of goods, persons, services and capital is guaranteed. The European Union has become the biggest consumer market in the world in terms of number of people (if China is not considered). At the same time it has become – behind the United States – the second producer of goods. Technical harmonization within the EU shall achieve its purposes, when a product manufactured according to the

standards of a country fulfils the prescriptions of the norms of any other country without any modification and vice versa.

Realization of the aims within the unified European market has involved the necessity to form a quality policy at EU level. Breakdown of outside customs (technical) hindrances forced the Community to develop its own system of technical regulations. The model is based on legal harmonization and mutual acceptance of national standards specifications. Consequently, EU technical regulations are subdivided into two areas: legally regulated and market regulated (spontaneous) spheres.

1.1. Legally Regulated (Harmonized) Sphere

This sphere expresses requirements in harmonized technical legal regulations. EU legal practice is hereby confined to fixing the essential requirements which should be respected by products and services in order to ensure the protection of health, safety, environment as well as the customer itself. In these fields technical solutions cannot be selected by the manufacturers concerned at their will, the frameworks shall be ensured by harmonized legal regulations, called directives.

The Machine Directives [1] has been in force since 1995 and enacted by each EU member country as a national law. Harmonization of legal rules involves more and more fields, the list of products concerned cannot be considered to be final and definitive. One product may be included in more directives as well: lifts e.g. by the directives for machines, low tension electric devices and electromagnetic compatibility. The basic requirements expressed by directives may be completed by special requirements as well.

1.2. Market Regulated Sphere

In the market regulated sphere, the requirements concerning goods and services are regulated by specification documents (norms, contracts) voluntarily accepted by the participants of economic life instead of legal rules. Within the scope of mutual acceptance, member countries should permit the free access to the market of any product manufactured and commercialized under lawful conditions in any other member country.

Within the EU, in order to ensure the function of a unified internal market, common standard minimum conditions are fixed for each requirement to be asserted, beyond which no other conditions can be claimed by the authorities of any country.

2. EU Rules Concerning Machines

The scope of the Directive of the Council of the European Community [1] describes harmonization of rules issued by the Member Countries concerning machines. For some sorts of machines, harmonized EU Directives (and ISO and EN Standards as well) concerning prescriptions for designing and manufacturing of them have been issued. Under the regulation, a machine can be distributed if its functioning meets the necessary safety criteria. Safety regulations should be harmonized in order to provide the free movement of machines without a drop in safety levels in the member states.

Social expenses related to the great number of accidents during the functioning of the machines could be reduced by a designing and manufacturing process respecting safety regulations in the first place, as well as by appropriate maintenance.

The Directive includes some partial safety equipment sold separately as well. Some machines are not included into the scope of the Directive, e.g. those operating exclusively by direct human force, ropeways, paternoster lifts, theatre traps, building site lifts, etc. Building and transporting machines not listed here shall be included into the Directive.

Annex 1 of the Directive contains the basic health protection and safety requirements concerning the designing and manufacturing of machinery and safety parts, in particular, passenger lifts and transporting equipment.

Strict quality control has been introduced concerning particularly dangerous machines. All machines bearing the CE sign may move and be put into operation freely in the EU. Member Countries shall not prohibit, restrict or hamper in their territory such machines and safety parts to be commercialized and put into operation, which correspond to requirements.

If a machine out of standard bears a 'E' sign or an out of standard safety part is accompanied with a declaration of EU-conformity, the member country concerned shall to initiate an appropriate process against the person having issued the sign or the declaration and inform the EU committee and the other member countries thereof.

3. Functioning of Certification Organs

In the legally regulated sphere, certification shall be carried out by the so called notified bodies.

These are appointed by member countries - from technically competent organs under their legal authority – at their own responsibility, then notified to the EU Committee and to other member countries. Notified organs shall be registered at EU level, the list is published in the Official Journals of the Community and kept up-to-date.

In the scope of harmonizing legal regulations concerning machines, the

Directive of the Council of the European Community [1] deals with the problem of minimum criteria for appointing certification organs, which shall be respected by member countries:

- the certifying organization shall not be a designer, manufacturer, supplier of the machine to be tested,
- highest level of technical competence,
- technical tasks involved to tests,
- impartiality of persons carrying out tests,
- the certifying organization shall take out a third party insurance, except if responsibility is taken over by the state,
- professional secrecy.

Main rules of evaluating conformity: The manufacturer shall issue an EU Adequacy Declaration to each machine or safety part manufactured and place the CE sign onto the machine. Elevators are classified here in the group of machines qualified as particularly risks with e.g. sawing machines, presses, some machine tools for underground works.

Even safety part equipment shall be subject to the same certification procedure applied to machines. If neither the manufacturer, nor its representative within the EC fulfils its commitment concerning the certification process, responsibility is taken over by all those persons that distribute the machines or the safety equipment within the EC.

4. The Agreement of Association

The European Union is an important economic partner of Hungary. Companies established in Hungary with foreign capital have been founded merely by companies established within the EU. Relations are built at the level of interstate agreements, political and economic measures and company actions.

The Parliament of the Republic of Hungary has promulgated by its Law I of 1994 the European Agreement about establishing an Association with the European Community. This Association aims among others at

- a free trade zone to be introduced stepwise – within 10 years – between Hungary and the Community;
- an improvement to be achieved between the Parties in the realization of other economic liberties the Community is based on;
- economic, financial and cultural cooperation to be promoted at the widest possible level.

The Agreement indicating a schedule of stepwise reduction of customs duties in its Chapter dealing with free movement of goods, while setting up the framework of economic cooperation – among others – aims at promotion of industrial cooperation, development and protection of investments in the fields of science and technology,

education and training, environmental economy and traffic. Here is the cooperation in the fields of industrial standards and quality assurance dealt with, where the diminishing of existing differences is aimed at, for this end:

- promoting the application of community's technical regulations, European standards and quality control processes;
- supporting Hungary's participation in the European programs concerning measurements and testing;
- supporting Hungary's participation in the specific organizations (CEN, CEN-ELEC);
- promoting the exchange of technical and methodical data among the international parties in the field of quality control.

In justified cases, the Community shall provide technical assistance to Hungary.

5. Certification of Adequacy in Hungary

5.1. The Safety Code

The Labor Safety Code [3] being the most important Hungarian legal regulation dealing with safety technology regulates this very far-reaching field in harmony with the Law of the European Union.

Any tools can be sold, imported, put into operation or used only if the requirements of working conditions are safe and not endangering health, which should be certified in the framework of general quality certification by the manufacturer, in the case of imported goods, the importer, in lack of importer, the user.

In the enacting clauses of the Minister of Labor [4], sale, implementation and use of the listed tools, as well as of any personal safety device are subject to a valid certificate of adequacy. Safety adequacy shall be tested as set forth by the Law on Quality and by the Decree of the Minister of Labor.

In case the manufacturing or implementing particular devices or tools is subject to a license issued by the competent authorities (such as elevators), the license is equal to a certificate of conformity.

In the above Decree of the Minister of Labor, the list of tools and devices, which shall be operated exclusively with a certificate of adequacy, includes among others: cranes, lifts, ropeways, mobile or other personal lifts, etc. Safety adequacy of tools and devices listed, when being of national origin, shall be certified by a second level certification as per a separate legal regulation about quality systems (not issued yet).

Remark: The Decree of the Minister of Labor not issued yet regulates the process of granting certificates of adequacy to tools, devices and establishments not subject to a license, and the (national or EU-) notified organizations authorized to issue such a certificate in Hungary.

In the case of imported tools listed in the Decree, safety adequacy shall be certified by an equivalent certificate of quality in Hungarian in the form as accepted by the Hungarian Standards Institute, or by its legal successor, the Hungarian Standards Corporation or a Certificate of Adequacy of an accredited Test Laboratory shall be produced.

Safety shall be periodically supervised (in the following referred to as 'Supervision') for tools and devices included in the above list, whose operation is subject to a certificate of adequacy, furthermore for any machine, whose manufacture or putting into operation is subject to a license issued by competent authorities, or the Supervision of which is foreseen by Law, by Standards Specification or by the documentation of operation.

The EU Directive on machines [1] is now valid in Hungarian law, too: in form of Decree of the Minister of Industry, Tourism and Trade [13].

5.2. Process before Authorities in Concern of Lifts

The Decree of the Government [12] about establishing, operating and testing lifts is dealing with lifts and charge elevators in any kinds of buildings, furthermore with paternosters for the transport of persons, escalators and travolators.

The Decree does not cover mine lifts, special external transporting equipment, cable-cars, ski lifts, ropeways, theater trap door and other elevator equipment, lifts in explosion dangerous area, spindle lifts, braking gear equipment, furthermore such hoisting and lifting equipment, where the car leaves guiding rails to cross to another railway, finally hoisting, transporting and loading equipment for industrial technologies or machine tools.

The competent authorities shall be requested to issue a license to build, to move or to modify a lift equipment if principal technical data shall be altered. Before submitting an application thereof, an expertise from the Quality Inspection Innovation Inc. of Building Industry (ÉMI Inc.) shall be enclosed stating that the lift is suitable for use. Both the contents of lift documentation and lift logbook is fixed in the Decree.

First instance licenses are issued by the notified bodies (this time there are 2 notified bodies in Hungary). Lift operators are liable to command yearly supervision works, to have defects and faults detected by the notified bodies, to report offsetting or re-implementation of lifts to ÉMI Inc.

The names and addresses of lift experts of ÉMI Inc. are registered with first instance building authorities. There is a national register of all lifts kept by ÉMI Inc.

On the basis of the above it can be stated that ÉMI Inc. is entitled in the territory of Hungary to issue certificates of adequacy in the field of lifts.

The Hungarian standards are equivalent with the Euronorms (EN 81 and EN 115), too.

5.3. *Certification of Quality*

Certification means that an independent third party acknowledges that a product, service or person complies with a standard or with any other prescription.

Certification may concern products, the quality system of the company, but in some cases even company personnel shall be certified, e.g. in the case of welders.

In the European Union in the fields governed by legal prescriptions it is compulsory to carry out adequacy tests for being introduced to market.

In the fields governed by market trends there is no legal prescription for being certified. Manufacturing and service companies shall – with regard to expectations both from market and customers – decide upon their own being certified and upon their standard level. Certification means here an adequacy to standards, to agreements as accepted voluntarily.

Building up quality assurance systems and their certification according to a standard of ISO 9000 series shall be a preliminary condition of getting to market to an even wider extent. An overwhelming part of certified systems is to be found in Europe.

Companies intending to export to the EU market shall be certified according to a standard of ISO 9000. This requirement has been introduced – to replace customs duties abolished – as a 'fine tuning' tool for market protection within the EU.

However, the importance of a certificate according to ISO 9000 on the market shall not be overestimated; it shall be considered as a necessary but not satisfactory condition of competitiveness. The certificate acknowledges that the company has carefully considered and documented its activity in relation to quality, by this becoming transparent and controllable, and if some faults are detected in the field of quality, corrective measures are taken. Neither high technical level, nor product quality is hereby guaranteed!

6. **Methods of Product Evaluation to Establish Conformity**

The Decision of the Council of the European Communities [5] deals with different methods of adequacy evaluating procedures. This Decision has fixed the activity during adequacy tests of both manufacturers and evaluating organizations in module elements.

- Modules are marked from A to H and concern both manufacturing and design phases of products.
- Directives list modules to be selected for a given product or product group and tend to offer the widest possible selection for the manufacturer to comply with requirements. Modular approach is a manufacturer-friendly solution never forcing the manufacturer to choose a particular preferred solution to have the adequacy of its product or service certified.

- Directives contain criteria for the manufacturer to consider when selecting the most appropriate modules from the list given in the Directives for the manufacturing environment of its product. Among them, the risk involved in the product is of basic importance.

7. Accredited Organizations

Testing is a sort of service. For this reason, it is extremely important that the customer, the sales partner have confidence in the certifying organization. Accreditation helps to reinforce confidence and mutual acceptance of certificates of conformity.

Accreditation is an official acknowledgment of the fact that an organization or an institution is prepared to exert certain activities (tests, certification, inspection) under certain conditions (legal prescriptions, standards specifications, etc.).

Accreditation can be applied both in fields governed by legal prescriptions or by market conditions. In former case, ministries decide whether accreditation is a primary condition of being appointed to carry out authority tests or to certify. According to EU-recommendation, appointment shall be based on accreditation. Therefore the trend is that countries are building up their national accreditation systems and they take them into consideration in the work of granting licenses by authorities, too. In the sphere governed by legal rules, exclusively state appointed organizations can be accredited, in the fields governed by market tendencies any organization may apply for being accredited.

National accreditation is a procedure carried out by an official, authorized organ of a state (in Hungary, the National Accreditation Body [9]) deciding upon suitability to certify, to test. In the EU, there is no unified accreditation system. In the most developed countries (e.g. Great Britain, Germany, France), accreditation has got a definite system, while in other countries (e.g. Greece, Belgium) there are no national accreditation systems. No international accreditation top organization is planned within the EU. As a goal, mutual acceptance of certificates issued by accredited certifying organizations was expressed.

8. National Quality Certification System

The National Standardization Law [8] sets forth as a task of the Hungarian Standards Corporation (MSZT) to elaborate the rules for using national standards signs and the conditions of their granting. Firms may apply voluntarily – in the hope it brings advantages on market – for the adequacy of their products to definite standards certified by MSZT. About products entitled to use the sign 'Tested for adequacy with MSZ ...' an up-to-date information can be obtained from MSZ with indication of manufacturer or dealer, furthermore, the Official Journal of Standardization publishes the list of registered products. Distinctive sign can be placed on the product,

on its package, in leaflets, etc. Other certifying organizations functioning on the basis of MSZ EN 45011 are entitled to carry out tests and grant distinctive signs (differing from those granted by MSZT).

9. Product Warranty and Protection of Customer

The European Community prescribed for member countries in 1985 to include a Product Warranty Law into their juridical system and to enact it according to their respective constitutional means.

In Hungary, there is a Law on Product Warranty [10] in harmony with EU Directives issued on this matter.

A product shall be considered as defective, if it does not provide the expected security, with particular regard to its function, to its reasonably expected use, the information about product properties, the sales date of product, the actual state of science and technology. Product manufacturer shall be liable for the damage caused by the fault of product. In the case of an imported product, the stipulations of Law concerning the manufacturer shall apply to product importer accordingly, who can enforce its claims against the manufacturer.

According to the Law on Customer Protection Main Inspectorates [11], main inspectorate and inspectorates shall inspect, among others, the prescriptions of laws or of authorities concerning the commercialization of products respected, and the prescriptions concerning quality and quality certification of goods and consumer services respected, how complaints for poor quality are settled.

References

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- [2] Directive No. 73/23 (EEC) of the Council of European Communities from February 19th, 1973 on harmonization of legal rules in relation to machines involving risks of electric origin.
- [3] Hungarian Law XCIII of 1993 on Labor Safety.
- [4] Decree No. 5/1993 (Dec. 26th) MüM of the Minister of Labor enacting some stipulations of Law XCIII of 1993 on Labor Safety.
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- [6] Decision No. 93/465 (EEC) of the Council of European Communities from July 22nd, 1993 on modules applying to adequacy test procedure phases and on CE sign of adequacy (Hungarian Standards Institute, 1995.)
- [7] Interpretation of ISO 9001 in the Practice (Hungarian Standards Institute, 1992.)
- [8] Hungarian Law XXVIII of 1995 on National Standardization.
- [9] Hungarian Law XXIX of 1995 on Accreditation of Laboratories, Certification and Supervisory Organizations.
- [10] Hungarian Law X of 1993 on Product Warranty
- [11] Hungarian Governmental Decree No. 95/1991 (July 23rd) Korm. on Consumer Protection Main Inspectorate

- [12] Hungarian Governmental Decree No. 113/1998 (June 10th) Korm. on Establishing, Operating and Inspecting Lifts
- [13] Decree No. 21/1998. (April 17th) IKIM of the Minister of Industry, Tourism and Trade on Safety Requirements and Certification of Adequacy of Machines.